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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/696,841	10/25/2000	Ray Herrera	STONEST.001A	4465

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KNOBBE MARTENS OLSON & BEAR LLP  
2040 MAIN STREET  
FOURTEENTH FLOOR  
IRVINE, CA 92614

EXAMINER

MEREK, JOSEPH C

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 06/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/696,841

Applicant(s)

HERRERA, RAY

Examiner

Joseph C. Merek

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 01 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 12-15 and 19-25 is/are pending in the application.
- 4a) Of the above claim(s) 25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-15 and 19-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

***Election/Restrictions***

Claim 25 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected non-elected, there being no allowable generic or linking claim. Election was made **without** traverse in Paper filed 3/1/2004.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 12, 13, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Sansom et al (US 5,168,683). Regarding claim 12, see Fig. 1 and 2, where the body is 10 which is made of concrete and suitable for use in an exposed position in an outdoor landscapes. See Col. 3, lines 13-21 where the slot is cut with a saw and is sized to accommodate a key. The closing strip is seen in Fig. 1 and installed in Fig. 2. Regarding claim 13, see Fig. 2 where the surface is 13 which is smooth. The limitation undersurface does not require any structure that is not in the reference. Moreover, the undersurface is a matter of orientation since when the body is turned over the undersurface is now the upper surface. Regarding claim 15, the strip is a pliable material. See Col. 3, line 3 and Figs. 1 and 2, where 6 and 7 are pliable so that the closure strip will enter the slot.

Art Unit: 3727

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 14 and 19-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Samson et al in view of Kim et al (US 6,638,152). Regarding claims 14 and 24, Samson et al does not teaches a hard material for the body but does not teach the natural hard rock. Kim et al teach cutting or grinding in concrete as well as natural hard rock, i.e. granite. It would have been obvious to employ the natural hard rock of Kim et al in the body of Samson et al to provide a more visually appealing material. Regarding claims 19, 20, and 23, Samson et al does not teach that cutting the slot comprises grinding or the circular rotating grinder blade. Kim et al teach an abrasive circular rotating blade for cutting or grinding slots in concrete or natural stone. It would have been obvious to employ the grinding and circular blade for cutting the slot of Samson et al as they are both suited to the specific task as taught by Kim et al. Moreover, since the blades for cutting the stone or concrete material are abrasive, the cutting is a grinding action. See Samson et al where the blade is advanced to the specified depth as seen in Col. 3, lines 13-21. Regarding claim 21 and 22, see Samson et al, Col., 3, lines 13-21, where the depth of the slot is a minimum of 30 mm. This 30 mm depth falls with in the specified ranges. 30 mm is between 1 and 1.5 inches.

### ***Response to Arguments***

Applicant's arguments with respect to claims 12-15 and 19-25 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

This is a non-final rejection due to the new grounds of rejection.

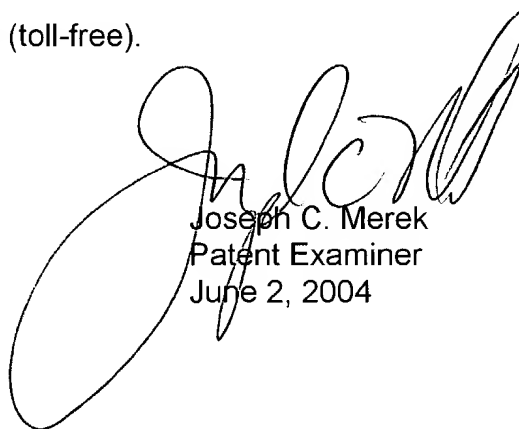
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Eichenlaub et al is cited for teaching a cutting wheel for natural or artificial rock. Metzger is cited for teaching sealing strip. Duncan et al is cited for teaching rotary cutting. Cleveland is cited for teaching a simulated or artificial stone hide a key.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph C. Merek whose telephone number is (703) 305-0644. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3727

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Joseph C. Merek  
Patent Examiner  
June 2, 2004